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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 373

ROY R. TORCASO,

Appellant,

v.

CLAYTON K. WATKINS,
CLERK OF THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, MARYLAND,

Appellee.

ON APPEAL FROM THE COURT OF APPEALS OF MARYLAND

MOTION TO DISMISS OR AFFIRM

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The Daily Record Co., Baltimore 3, Md.

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Appellee, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, moves to dismiss or affirm the appeal on the ground that the question is so unsubstantial as not to warrant further argument.

QUESTIONS PRESENTED

1. Does Article 37 of the Declaration of Rights of the Maryland Constitution, which requires "a declaration of belief in the existence of God" as a qualification for "any office of profit or trust in this State", violate the ban contained in the First Amendment of the Constitution of the United States respecting the establishment of religion?

2. Has the Appellant been denied due process of law or equal protection of the law as guaranteed by the Fourteenth Amendment to the United States Constitution?

STATEMENT OF FACTS

The Appellee adopts the Appellant's Statement of Facts.

ARGUMENT

I.

The Appellant contends that the requirement of a belief in the existence of God as a condition to holding public office in Maryland violates the ban on the establishment of religion contained in the First Amendment to the United States Constitution because, it is contended, the provision of the Maryland Declaration of Rights prefers some religions over others, specifically theistic religions, over those which are non-theistic.

From the beginning of the history of our nation, there has been a realization and recognition of the existence of a Supreme Being in the conduct of our affairs. It is clearly recognized in the Declaration of Independence, where it is stated:

> "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness. * * *
>
> "We, therefore, the representatives of the United States of America, in General Congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name and by authority of the good people of these Colonies, solemnly publish and declare * * *; and
>
> "For the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes and our sacred honor."

An examination of the constitutions of the various states reveals a consistent recognition of religious obligations. The Maryland Constitution, in its preamble, states as follows:

> "We, the People of the State of Maryland, grateful to Almighty God for our civil and religious liberty, and taking into our serious consideration the best means of establishing a good Constitution in this State for the sure foundation and more permanent security thereof, declare: * * *".

For a thorough analysis of State Constitutional provisions relating to the recognition of a Supreme Being, see the unanimous opinion of this Court written by Mr. Justice Brewer in *Church of the Holy Trinity v. United States*, 143 U.S. 457, 36 L. Ed. 226. Mr. Justice Brewer concluded:

> "There is no dissonance in these declarations. There is a universal language pervading them all, having one meaning; they affirm and reaffirm that this is a religious nation. These are not individual sayings, declarations of private persons; they are organic utterances; they speak the voice of the entire people. * * *".

(It is important to note that Mr. Justice Brewer quoted the very provisions of the Maryland Declaration of Rights now sought to be held invalid.)

More recently, the majority of this Court in *Zorach v. Clauson*, 343 U.S. 306, 96 L. Ed. 954, speaking through Mr. Justice Douglas, stated as follows:

> "We are religious people whose institutions presuppose a Supreme Being. We guarantee the freedom to worship as one chooses. We make room for as wide a variety of beliefs and creeds as the spiritual needs of man deem necessary. We sponsor an attitude on the part of government that shows no partiality to any one group, and that lets each flourish according to the zeal of its adherents and the appeal of its dogma. When the State encourages religious instruction or cooperates

> with religious authorities by adjusting the schedule of public events to sectarian needs, it follows the best of our traditions. For it then respects the religious nature of our people and accommodates the public service to their spiritual needs. To hold that it may not would be to find in the Constitution a requirement that the government show a callous indifference to religious groups. That would be preferring those who believe in no religion over those who do believe. * * *".

Courts, including this Court, have functioned upon the assumption of the sancity of an oath. Public officers, including the members of this Honorable Court, qualify by being sworn in office. Title 28, Section 453, U.S.C.A., provides as follows:

> "Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of his office: 'I, ..., do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as ..... according to the best of my abilities and understanding, agreeably to the Constitution and laws of the United States. *So help me God*'." (Emphasis supplied.)

The oath required of the Appellant is no greater than the oath taken by the members of this Court, as well as the members of the other courts of the United States. Our nation has, in its everyday affairs, officially recognized the existence of God and there has been legislative sanction for the same. Our coins contain the inscription "In God We Trust" (Title 31, U.S.C.A., Section 324). Our Federal courts open with the supplication, "God save the United States and this Honorable Court". See *Zorach v. Clauson, supra.* The pledge of allegiance to the Flag of the United States recognizes that this is "One Nation under God"

(Title 36, U.S.C.A., Section 172). The postage stamp which accompanied this document expounds as the American credo "In God is our Trust". Likewise, in our National Anthem we reverently sing: "And this be our motto, 'in God is our trust'."

The reading of the Lord's Prayer, without comment, by school children has been judicially approved. See *Doremus v. Board of Education*, 75 A. 2d 880 (N.J.); appeal dismissed 342 U.S. 429, 96 L. Ed. 475.

The drafters of the Constitution of the United States never conceived that a belief in the existence of God as a qualification for public office was repugnant to the principles of fundamental liberty. See Story, *Commentaries on the Constitution of the United States*, Sections 1870-1878. To have attempted to require states to hold religion in utter indifference would have created universal disapprobation, if not universal indignation, at the time of the adoption of the Constitution. See Story, *supra*, Section 1874.

In *Davis v. Beason*, 133 U.S. 333, 33 L. Ed. 637, this Court upheld an Act of Congress outlawing bigamy and polygamy in the territory of Idaho. In addition, the Act provided that anyone who failed to take an oath to the effect that he did not belong to any order, organization or association which practiced or believed in bigamy or polygamy could not vote or qualify to hold public office. This Court held that the Act did not violate the provisions of the First Amendment to the Constitution and stated as follows:

> "* * * The First Amendment to the Constitution, in declaring that Congress shall make no law respecting the establishment of religion, or forbidding the free exercise thereof, was intended to allow everyone under the jurisdiction of the United States to entertain such notions respecting his relations to his Maker and the duties they impose as may be approved by his judg-

ment and conscience, and to exhibit his sentiments in such form of worship as he may think proper, not injurious to the equal rights of others, and to prohibit legislation for the support of any religious tenets, or the modes of worship of any sect. * * *".

To the same effect, see *Reynolds v. United States,* 98 U.S. 145, 25 L. Ed. 244, and *Murphy v. Ramsey,* 114 U.S. 15, 29 L. Ed. 47.

The Appellant urges that the provisions of Article VI, Section 3, of the United States Constitution, which prohibits among other things a religious test as a qualification to "any office or public trust under the United States" is applicable to the several states. This argument must fall by its own weight since the prohibition expressly applies only to offices held under the national government. Its purpose was to cut off forever any pretense of alliance between any church and the national government. This is particularly true when this prohibition is considered with the requirement that all legislative, executive and judicial officers of both the United States and of the several states are required to be bound by an oath or affirmation to support the Constitution of the United States. *Expressio unius est exclusio alterius.*

It is respectfully submitted that the provisions of the Maryland Declaration of Rights now under attack in this Court are so fundamental to the beliefs of the people of the State of Maryland, as well as the nation as a whole, that it does not require further argument to find that these provisions do not tend toward the establishment of a religion within the State of Maryland.

II.

The Appellant avers that the mandate of the Fourteenth Amendment provides that no state shall deny to any person

the equal protection of the law and, therefore, bars the State from granting privileges to some persons which it withholds from others unless a constitutionally reasonable distinction can be made between those favored and those not favored. It has long been recognized by this Court that it is essential to the independence of the states that they retain the power to prescribe the qualifications of their own officers, the tenure of their appointments and the manner of their appointments or elections, and that the states should be free from external interference except so far as plainly and clearly provided by the Constitution of the United States.

In *Taylor v. Beckham*, 178 U.S. 548, 44 L. Ed. 1187, this Court refused to assume jurisdiction to review the determination of the state courts relative to the election of the Governor and the Lieutenant-Governor of the State of Kentucky. The Court stated that the unsuccessful litigant in the state court had not been denied due process of law or equal protection of the law. Therefor, it is clear that where a state legally establishes qualifications for office, that state shall have the sole determination of whether a person has met those qualifications for office.

More recently, this Court, in *Snowden v. Hughes*, 321 U.S. 1, 88 L. Ed. 497, reaffirmed this conclusion by stating:

> "More than forty years ago this Court determined that an unlawful denial by state action of a right to state political office is not a denial of a right of property or of liberty secured by the due process clause. Taylor & Marshall v. Beckham, 178 U.S. 548, 44 L. Ed. 1187, 20 S. Ct. 890, 1009. Only once since has this Court had occasion to consider the question and it then reaffirmed that conclusion, Cave v. Missouri, 246 U.S. 650, 62 L. Ed. 921, 38 S. Ct. 334, as we reaffirm it now."

Clearly, the State of Maryland may establish qualifications for office and such qualifications are not prohibited by the Fourteenth Amendment. Under the Constitution of the State of Maryland, disbelief in a Supreme Being and the denial of any moral accountability for conduct is a reasonable basis for classification to render the person incompetent to hold public office. Furthermore, the Appellant seeks to be afforded the privilege of becoming a Notary Public, who is given power to administer oaths and certify thereto (Article 68, Section 3, Annotated Code of Maryland, 1957 Ed.), when he, himself, has disavowed belief in God and in the sanctity of the very oath he intends to administer. For these reasons, it is respectfully urged that the Appellant has not been deprived of due process of law or equal protection of the law, as alleged.

CONCLUSION

For the reasons above stated, it is respectfully submitted that by his appeal Appellant presents no substantial question for further argument in this Court, and that the opinion and judgment of the Court of Appeals of Maryland should be affirmed, or, in the alternative, the appeal should be dismissed.

Respectfully submitted,

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